

REMARKS

Claims 1, 2, 5-10, 13-15, and 17-22 are pending in this application, of which claims 1, 9, and 17 are independent. In this Amendment, claims 1, 5, 6, 9, 13, 14, and 17-22 have been amended. Care has been exercised to avoid the introduction of new matter. Support for this Amendment can be found in, for example, page 7, lines 12-28; and page 15, lines 16-27 of the specification.

Requirement for Information - 37 C.F.R. § 1.105

The Examiner required the submission, from Applicants and Assignee of this application, of such information as may be reasonably necessary to properly examine or treat the matter (37 CFR 1.105). The Examiner specifically required information to identify products and services embodying the disclosed subject matter of system load balancing and identify the properties of similar products and services found in the prior art.

Applicants made a good faith attempt, and made a reasonable inquiry, to obtain the above information. Applicants' responses to the Examiner's requirements are as follows:

Applicants are now under consideration of whether or not to manufacture machines implementing the load balancing method disclosed in the present application. Manuals or documents relating to the method have not yet been prepared as of September 2009.

Applicants found that Biliris et al. (U.S. Patent No 6,041,354, hereinafter "Biliris") cited in the PTO-892 form attached to the present Office Action appears to disclose an aspect of a load balancing system. Biliris describes a method for handling continuous media efficiently (*see* column 2, lines 3-30) that may correspond to a load balancing recited in the preamble of claim 1. It also describes an importance ranking policy (*see* column 3, lines 10-23) and the algorithms (*see* column 5, lines 51-67) used for load balancing. It is noted that Biliris is silent on claim 1

including the steps of “registering performance information...; registering in advance judgment information...; comparing the judgment information of an already-reserved business service with the judgment information of the designated business service and thereby selecting...; and “executing the designated business service....”

Applicants believe that the above responses to the Examiner’s requirements for information fully comply with the requirements under 37 C.F.R. § 1.105.

Title

The Examiner asserted that title is not descriptive. The tile has been amended in the manner suggested by the Examiner. Withdrawal of the objection to the title is, therefore, respectfully solicited.

Patentability under 35 U.S.C. § 112

Claims 5, 6, 13, 14, 20, and 21 have been rejected under 35 U.S.C. § 112, second paragraph, as being purportedly indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

The Examiner asserted that the following steps are missing in claims 5, 13, and 20: what method steps are taken if a step not capable of substituting for the particular step has not been omitted. Claims 5, 13, and 20 have been amended to replace the word “if” with -- when -- to clarify that the claims do not specifically address what will happen when a step **NOT** capable of substituting for the particular step has not been omitted, but rather address what will happen when a step capable of substituting for the particular step has not been omitted.

The Examiner also asserted that the following steps are missing in claims 6, 14, and 21: what method steps are taken if the omission of the particular step has an effect on already reserved business services. Claims 6, 14, and 21 have been amended to replace the word “if” with -- when -- to clarify that the claims do not specifically address what will happen when the omission of the particular step has an effect on already reserved business services, but rather address what will happen when the omission of the particular step has no effect on already reserved business services.

Based on the foregoing, claims 5, 6, 13, 14, 20, and 21, as amended, are clear and do not have any omitted steps. Withdrawal of the rejection of the claims under 35 U.S.C. § 112, second paragraph, is respectfully solicited.

Patentability under 35 U.S.C. § 101

Claims 1, 2, 5-10, 13-15, and 17-22 have been rejected under 35 U.S.C. § 101 because according to the Examiner, the claimed subject matter is directed to non-statutory subject matter.

With respect to claims 1, 2, and 5-8, the Examiner asserted that in their broadest reasonable interpretation and in light of the specification, the claims can be interpreted to be embodied on abstract mediums such as carrier waves and signals, and therefore not eligible for patent protection. Applicants respectfully disagree with the Examiner.

The test for method claims to determine whether the claimed subject matter is statutory under 35 U.S.C. § 101 is performed based on the machine-or-transformation test under *In re Bilski*. In consideration of the *In re Bilski* case and the PTO’s Interim Examination Instructions for Evaluating Patent Subject Matter Eligibility issued August 24, 2009, claim 1 has been amended to recite “using a processor, comparing the judgment information of an already-

reserved business service with the judgment information of the designated business service, and thereby selecting one or more information processing modules....” Applicants submit that under the broadest reasonable interpretation, the processor is programmed in a particular manner to perform the claimed comparing step, selecting step, reserving step, and omitting step, and those steps are not mere field-of-use or insignificant extra-solution activities in the claimed subject matter, which meets the machine test according to the PTO’s Interim Examination Instructions for Evaluating Patent Subject Matter Eligibility. Accordingly, the subject matter claimed in claim 1 and dependent claims 2 and 5-8 is directed to statutory subject matter.

With respect to claims 9-10 and 13-15, the Examiner asserted as follows (emphasis added):

As recited, claims 9-10 and 13-15 are directed toward a computer program, software per se. However, under the current guideline of 35 USC 101, computer software must be tangibly embodied on a computer readable medium, and, when executed by a computer processor, perform the steps of the software. In their broadest reasonable interpretation and in light of the specification, claims 1-2 and 5-8, as recited, can be interpreted to be embodied on abstract mediums such as carrier waves and signals, and therefore not eligible for patent protection. Accordingly, claims 1-2 and 5-8 are not eligible for patent protection.

It appears that the Examiner did not address claim 9, 10, and 13-15, but addresses claims 1, 2, and 5-8. The Examiner’s rejection is unclear, and therefore, clarification is required.

The PTO’s Interim Examination Instructions for Evaluating Patent Subject Matter Eligibility on page 3 states that “[i]f the claimed product falls within one of the three product categories [i.e., machines, manufactures, and composition of matter] of the invention and does not recite judicially excepted subject matter, e.g., an abstract idea, a mathematical algorithm, a law of nature, or natural phenomenon, it qualifies as eligible subject matter” (emphasis in original). Claim 9 address a load balancing system comprising a business configuration management processing unit, a service-level-objective management processing unit, a

performance management processing unit, and a reservation management processing unit. The claimed subject matter apparently falls within one of the three product categories, and does not recite judicially excepted subject matter. Accordingly, the subject matter included in claim 9 and dependent claims 10 and 13-15 is directed to statutory subject matter.

With respect to claims 17-22, Applicants have amended the claims to recite “a computer readable storage medium” as suggested by the Examiner.

Therefore, withdrawal of the rejection of claims 1, 2, 5-10, 13-15, and 17-22 under 35 U.S.C. §101 is respectfully solicited.

Conclusion

In view of the above remarks, Applicants submit that this application should be allowed and the case passed to issue. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

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including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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